SBCivil Writ Petition No.1514/2006

Bhagchand & Ors.
vs.
Madanlal & Ors.

Date of Order :: 3rd April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Ranjeet Joshi, for the petitioners.

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In a suit for cancellation of trust deed and permanent injunction filed by several plaintiffs, four plaintiffs viz. Madanlal (plaintiff No.7), Ajit Kumar (plaintiff No.10), Kasturchand (plaintiff No.11) and Jambu Kumar (plaintiff No.13) preferred an application permitting them to withdraw the suit.

The trial court by its order dated 17.1.2006 while deciding the application submitted by the plaintiffs named above ordered for deleting their names from the plaint.

The instant petition for writ is filed by the remaining plaintiffs giving challenge to the order dated 17.1.2006 on the count that the trial court while deciding the application preferred by the plaintiffs No.7,10,11 and 13 acted in contravention of the provisions of Order 23 Rule 1(5) CPC.

According to counsel for the petitioners the trial court was having no authority to permit the plaintiffs No.7,10,11 and 13 (respondents No.1 to 4)

to withdraw the suit or abandon the suit or part of a claim without the consent of other plaintiffs. According to counsel for the petitioners in the instant matter the plaintiff petitioners never consented for withdrawal of the suit as prayed by the plaintiffs No.7,10,11 and 13 (respondents No.1 to 4), therefore, the order impugned dated 17.1.2006 is without jurisdiction.

Heard counsel for the petitioners and examined the order dated 17.1.2006.

By the order impugned the trial court has not at all permitted the plaintiffs No.7,10,11 and 13 (respondents No.1 to 4) to withdraw the suit but has ordered to delete their names from the array of the plaintiffs. In view of it the contention raised by the petitioners that the order impugned is in contravention of Order 23 Rule 1(5) CPC is absolutely misconceived. The trial court has not at all acted beyond the jurisdiction vested with it.

The petition for writ, therefore, is having no merit and the same, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.